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August 2, 1993

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

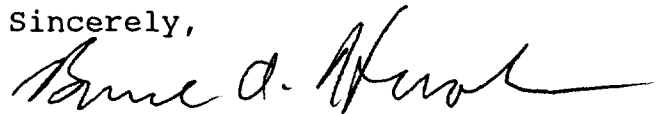
Re: Rate Regulation
MM Docket No. 92-266

Dear Mr. Caton:

Please find attached on behalf of the National Association of Telecommunications Officers and Advisors, et. al, an original and eleven copies of the Reply of the National Association of Telecommunications Officers and Advisors, et. al, to Oppositions to Petitions for Reconsideration in the above-referenced proceeding.

Any questions regarding the submission should be referred to the undersigned.

Sincerely,



Bruce A. Henoch

Attachment

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
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OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Sections)
of the Cable Television)
Consumer Protection and)
Competition Act of 1992)
)
Rate Regulation)
)

MM Docket No. 92-266

TO: The Commission

**REPLY OF THE
NATIONAL ASSOCIATION OF TELECOMMUNICATIONS
OFFICERS AND ADVISORS, THE NATIONAL
LEAGUE OF CITIES, THE UNITED STATES
CONFERENCE OF MAYORS, AND THE NATIONAL
ASSOCIATION OF COUNTIES TO OPPOSITIONS TO
PETITIONS FOR RECONSIDERATION**

Pursuant to 47 C.F.R. § 1.429, the National Association of Telecommunications Officers and Advisors, the National League of Cities, the United States Conference of Mayors, and the National Association of Counties (collectively, the "Local Governments") submit this Reply to Oppositions to Petitions for Reconsideration in the above-captioned proceeding.

I. INTRODUCTION

Several parties have filed Oppositions to the Petition for Reconsideration filed by the Local Governments in this proceeding, which concerns implementation by the

Federal Communications Commission ("Commission") of Section 623 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").¹ The Local Governments submit this brief response to several of the points made in the Oppositions. First, contrary to the assertion of several of the opposing parties, the Commission must circumscribe carefully and narrowly the types of "external costs" that cable operators are permitted to recover in order to prevent the rate regime from being undermined. Second, cable operators should be required to submit to the same rate regulatory treatment

...the ... that would be subject to

benchmark rates on one tier and cost of service on the other.⁴ However, as the Local Governments demonstrated in their Petition for Reconsideration,⁵ cable operators should, once they choose a method, be required to use this same method in both the basic and cable programming service tier proceedings, if both proceedings occur within a reasonable time of each other. It is the Commission's intention that the same "reasonable" rate determination be made on both tiers, and it would undermine this intention if operators were given the unrestricted flexibility to decide that it would be more advantageous to submit a cost of service schedule in one proceeding while submitting a benchmark schedule in the other. Such gaming of the rate regulation rules by cable operators is plainly inconsistent with the Congressional mandate to protect subscribers from unreasonable rate-setting practices.

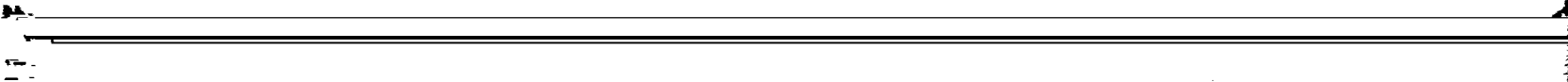


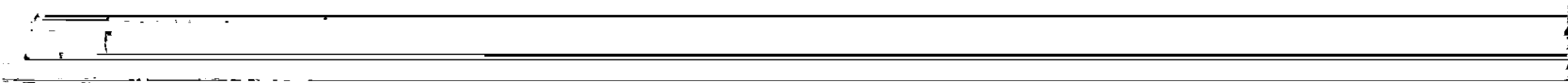

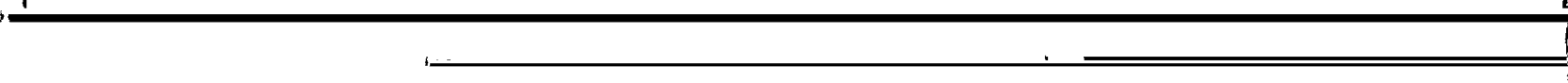
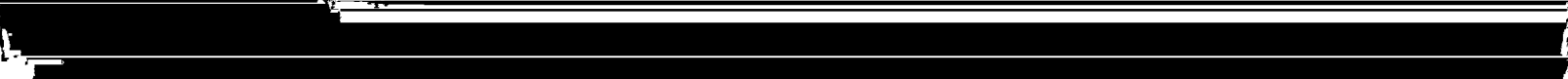

C. The Commission Should be Able to Regulate Basic Rates Upon a Simple Certification by the Franchising Authority That it Lacks the Resources to Regulate.

Time Warner Entertainment also stated that it is imperative that local authorities demonstrate that the franchise fees collected from cable operators do not

⁴ See NCTA at 14-16; Cole, Raywid & Braverman at 12-13; TWE at 13-14; Continental at 1-5.

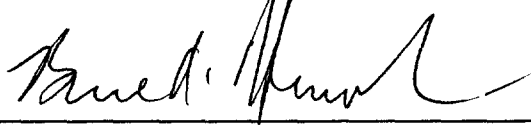
⁵ Petition for Reconsideration and Clarification of the National Association of Telecommunications Officers and Advisors, et. al, filed June 21, 1993, at 35-38 ("Local Government Petition").

adequately cover the cost of regulation before the Commission be permitted to regulate basic tier rates.⁶ As discussed in the Local Government Petition,⁷ this requirement violates Section 622(i) of the Cable Act, which expressly prohibits a federal agency from regulating the use of funds derived from franchise fees. Moreover, even if it were permitted by the Cable Act, Local Governments believe that the Commission should not require a municipal government to justify its lack of adequate resources,



suggestions of Local Governments as outlined above.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Norman M. Sinel", written over a horizontal line.

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Date: August 2, 1993

CERTIFICATE OF SERVICE

I, Bruce A. Henoch, an attorney at Arnold & Porter, certify that I served a copy of the attached Reply of the National Association of Telecommunications Officers and Advisors, et. al, to Oppositions to Petitions for Reconsideration, by U.S. Mail, postage prepaid, this 2nd day of August, 1993, upon the following:

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Bruce A. Henoch